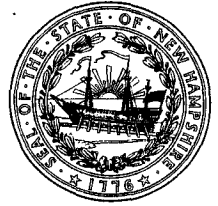




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

June 23, 2005

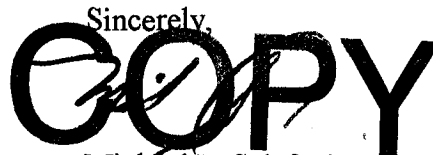
Carroll Concrete Co., Inc.  
Attn: Richard A. Fraser  
PO Box 368  
Newport, NH 03773-0368

Re: Docket No. AF 05-015 Motion to Accept Settlement Agreement

Dear Mr. Fraser:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Director of the Waste Management Division, and accepted by Commissioner Michael P. Nolin on June 21, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,  
  
Michael P. Sclafani,  
Legal Assistant

cc: Anthony P. Giunta, PG., Director, Waste Management Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
DES Public Information Officer  
Lynn Woodard, DES WMD  
Thomas Beaulieu, DES WMD  
Susan Hanamoto, DES WMD

Carroll Concrete Co., Inc.  
Attn: Richard A. Fraser  
P.O. Box 368  
Newport, NH 03773-0368

**ADMINISTRATIVE FINE  
No. AF 05-015**

Re: 301 Route 12A, West Lebanon, NH  
UST ID#0-110487

**MOTION TO ACCEPT SETTLEMENT AGREEMENT**

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and Carroll Concrete Co., Inc. parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. Carroll Concrete Co., Inc. ("Carroll Concrete") is the registered facility owner of one underground storage tank ("UST") at the Carroll Concrete Co., Inc. facility ("the Facility"), further identified as UST # 0-110487, located on real property at 301 Route 12A, West Lebanon, NH ("the Property").
3. On March 4, 2005, the Division issued Notice of Proposed Administrative Fine No. AF 05-015 ("the Notice") to Carroll Concrete Co., Inc. seeking fines totaling \$1,000 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
4. The Notice cited Carroll Concrete for violating Env-Wm 1401.20(a) by failing to submit plans and specifications at least 90 days prior to commencing construction of a substantial modification of Tank #6. Pursuant to Env-C 607.02(b) the Division sought a fine of \$1,000.
5. At a subsequent settlement meeting Carroll Concrete noted that it had hired a professional to make upgrades to their UST system prior to the last DES inspection. The upgrades included installation of a total containment secondary pipe, a sump, a sump monitor and upgrades to the Veeder-Root at a cost of \$4,713.00.

Carroll Concrete relied on its contractors to complete the work and comply with all rules and regulations. After the inspection, during which the violation was noted, Carroll Concrete had the appropriate plans prepared and the contractor responsible to Carroll Concrete for this oversight paid for their production.

While it was agreed at the settlement meeting that ultimately the upgrades improved the safety of the

system, it was also agreed that the system owner is ultimately responsible for compliance with the rules and noted that DES has no authority over the contractors hired by system owners.

6. In order to settle this matter, the Division and Carroll Concrete have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

7. Of the proposed fine, in the amount of \$1,000, 20% or \$200 shall be suspended due to this being a one-time unintentional violation; 20% or \$200 shall be suspended due to Carroll Concrete's good faith effort to return this facility to compliance; 20% or \$200 shall be suspended due to Carroll Concrete's compliance history; and 20% or \$200 shall be suspended in light of Carroll Concrete's cooperation in dealing with the violation cited by DES in a timely fashion.

8. The suspended portion of the proposed fine, in the amount of \$800 is contingent upon Carroll Concrete maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of one year from the date of the execution of this Agreement. If Carroll Concrete fails to maintain compliance during the one-year period, the suspended portion of the fine, in the amount of \$800 shall become due and payable immediately. If Carroll Concrete maintains compliance for the prescribed one-year period, the suspended portion of the fine shall be waived.

9. Carroll Concrete agrees to pay the remaining \$200 upon execution of this Agreement by Carroll Concrete.

10. Payment under Paragraph #9 and any payment that becomes due pursuant to Paragraph #8 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit  
Attention: Michael Sclafani, Legal Assistant  
P.O. Box 95  
Concord, NH 03302-0095

11. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

12. The parties have entered into this Agreement to avoid the time and cost of litigation. Except as described in this paragraph, this Agreement shall not constitute, be construed as, or operate as: (i) an admission of liability by Carroll Concrete; (ii) an admission by Carroll Concrete or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense Carroll Concrete might raise in any third party proceeding.

By executing this Agreement, Carroll Concrete waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

Carroll Concrete shall not challenge the validity of the violations alleged herein in the context of any future proceeding by DES assessing the compliance history of Carroll Concrete and alleging violations of the New Hampshire Code of Administrative Rules or statutes, or in any proceeding before DES to enforce this Agreement.

13. The effective date of this Agreement will be the date on which it is signed by a representative of Carroll Concrete, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

14. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,


Carroll Concrete Co., Inc.

**COPY**  


June 3, 2005  
Date

By: President  
Duly Authorized


DES Waste Management Division

**COPY**  


6/20/05  
Date

Anthony Giunta, P.G., Director

This Motion to Accept Settlement agreement is granted this 21<sup>st</sup> day of June, 2005.

**COPY**  
  
Michael P. Noll, Commissioner  
Department of Environmental Services